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## REMARKS

Please consider the following response to the Office Action for the above-captioned application. The Office Action is marked as Paper No. 23, and as mailed May 9, 2003:

### RESPONSE TO THE EXAMINER'S DETAILED ACTION

The Examiner has withdrawn the finality of the last Office Action, which is properly referred to as Paper No. 17, and marked as mailed on 5/10/2002. The Appellants respectfully submit the Examiner's actions are improper. MPEP § 1208.02 allows the reopening of prosecution after appeal *only* with approval from the Supervisory Patent Examiner:

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. (MPEP § 1208.02, 8<sup>th</sup> Edition, latest revision February 2003.)

Only the Primary Examiner signed the May 9, 2003 Office Action. No reference is made to approval by a supervisory examiner. The required permission was apparently not secured. The Examiner has failed to establish the required permission.

Additionally, the Examiner failed to advise the Appellants of their option to request reinstatement of the appeal after a reopening of prosecution, per the form paragraph 12.81 suggested in MPEP § 1208.02.

The Appellants are indeed puzzled by the "modifications of pending rejections," now put forward by the Examiner. The present claim rejections are all presented in prior actions *verbatim*. Specifically, a quick cut and paste combination of Examiner's Paper No. 6 (6/30/2000), and Paper

No. 13 (9/21/2001) equate to the Examiner's present arguments. The current rejection is not new, and therefore not a valid "new ground of rejection," as required for reopening of prosecution. The Appellants are concerned with the apparent waste of resources embodied by the Office Action of May 9, 2003, and this requisite response.

Therefore, the Appellants respectfully traverse the Examiners rejections, and per MPEP § 1208.02, **request reinstatement of the appeal**. This request is properly accompanied herein, by a supplemental brief, per 37 CFR 1.193(b)(2), submitted in triplicate.

Respectfully submitted,

STRATTON BALLEW PLLC

A handwritten signature in black ink, appearing to read 'Chris E. Svendsen', with a stylized, flowing script.

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